IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8797 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALYANBGH COOP HOU SOCIETY LTD

Versus

RAJENDRAPRASAD SHYAMLAL K

Appearance:

1. Special Civil Application No. 8797 of 1990
MR BS PATEL for Petitioners No. 1-2
MR JIVANLAL G SHAH for Respondent No. 1
MR BY MANKAD, AGP for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 22/02/2002

ORAL JUDGEMENT

1. Kalyanbaug Co-operative Housing Society Limited and others, petitioners have filed this petition challenging the judgment and order dated 30th March, 1988, passed by the learned Board of Nominees, Vadodara and also the order of the Gujarat Co-operative Tribunal (hereinafter referred to as `the tribunal') dated 2nd September, 1989, passed in Appeal No.238 of 1988 filed by the petitioner in this behalf whereby the tribunal has dismissed the said appeal.

2. The facts giving rise to this petition are as under:-

2.1 The first petitioner society has been incorporated at Manjalpur after obtaining necessary permission from Government of Gujarat under Sec.20 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as `the Act of 1976'). The Government granted permission to the said society on a condition that all the members were supposed to fulfil the same. According to one of the condition, the members of the society were supposed to file declaration form and copy of which was required to be submitted before the Competent Authority under the Act of 1976.

2.2 It has been further stated that the Annual General Meeting of the petitioner no.1 society held on 27.9.1981 had decided to allot a plot to its members who furnish their declaration form within two months. Inspite of approximately more than four months time was given and next special general meeting for allotment was held on 4.4.82, even then the respondent No.1 had not filed declaration form as per demand and he was not allotted the plot. The petitioner No.2 had been allotted the plot no. 16-A in the petitioner No.1 society.

2.3 In view of the same, the respondent No.1 had filed a Lavad Case being L.C.No.1362/84 before the learned Board of Nominees, Vadodara. In that case both the petitioners chose not to remain present before the learned Nominee as they were under the impression that it was a dispute between petitioner no.1 society and the respondent no.1. The learned Nominee proceeded ex-parte and delivered the judgment on 30.3.88.

2.4 It may be noted that when the judgment was delivered, from the rojkam, it appears that both the petitioners were absent in this behalf.

2.5 From the record it appears that the award of the Nominee has to be communicated to the parties by registered post as per Rule 41 (4)(b) of the Gujarat Co-operative Societies Rules, 1965 (hereinafter referred to as `the Rules'). However, it appears from the record that the said procedure has not been followed in this case. However, the petitioners came to know about the contents of the award of the nominee somewhere in June 1988 and as per Sec.102 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as `the Act'), the petitioners filed appeal against the award of the nominee. The said appeal was also filed in June

1988.

2.6 When the appeal reached hearing before the tribunal, the tribunal has rejected the appeal of the petitioners only on the ground that the petitioners chose not to remain present voluntarily before the Nominee. According to the tribunal, the petitioners refused to accept the summons of the Lavad Case and the notice which was issued was also refused by the petitioners at the relevant time and on that ground the appeal was dismissed.

3. Mr.B.S.Patel, learned advocate for the petitioner has invited my attention to Section 102 of the Act which provides appeal against decision of registrar of his nominee or board of nominees and Rule 41 of the Rules particularly Rule 41(4)(b) of the Rules which reads as under:

"Rule 41. Procedure of hearing and decision:- (1) The adjudicating authority shall record a brief note in English or in Gujarati language of the evidence of the parties and witnesses who attend and upon the evidence so recorded and upon consideration of any documentary evidence produced by either side, a decision shall be given in accordance with justice, enquiry and good conscience and it shall be reduced to writing. Such a decision shall be given in open court either at once or on some future date of which due notice shall be given to the parties."

Rule 41(4)(b). The decision shall be communicated to the parties by -

(a) pronouncement of the award; or

(b) registered post to any party which may be absent on {the date if due notice of the decision is not given to such party}.

3.1 He submitted that though the award was pronounced by the learned Board of Nominee, however as per the mandatory directions of Rule 41(4)(b) of the Rules the award was not communicated by the registered post to the petitioner and, therefore, there is a breach of mandatory directions of Rule 41(4)(b) in this behalf. In view of the same, he submitted that the order passed by the tribunal is liable to quashed and set aside.

3.2 Mr.Patel, learned advocate for the petitioner has also relied upon the judgment of this Court in the case of Amrutlal Mangalji Joshi Vs. Arab Timbdi Juth Sevadayi

Sahakari Mandali Ltd. and Others reported in 1978 Vol.19 GLR 20 where after quoting Rule 41 of the Rules on page 22 and 23 the Court has observed as under:

"The effect of this Rule which provides a procedure while giving the decision is that after the evidence is over, the Nominee is to give the decision and he may give the same in open Court either at once or on some future date of which due notice would be given to the parties. If the Nominee does not pronounce the decision at once in the Court and a future date is fixed for pronouncing the decision, the decision is deemed to be communicated to the parties either by pronouncement of the award or by registered post to any party which may be absent on such date. In other words, sub-rule (4) of Rule 41 prescribes an obligation on the Nominee to communicate the decision to the parties. That communication can be made by pronouncing the award if both the parties are present or by sending it by registered post to the party which may be absent when the award is pronounced. The Tribunal had lost sight of this statutory provision while determining the question of limitation in the appeal. The nominee fixed 24th January 1971 as the date for pronouncing the decision. On that date he pronounced his judgment and award. It is a common ground that the petitioner was absent on that date in the Court. The Nominee held the petitioner to be solely liable for the decretal amount and exonerated other defendants. On plain reading of Rule 41(4), the petitioner cannot be fastened with the knowledge of the decision contained in the award. The period of limitation in filing the appeal against such decision under sec.102 of the Gujarat Co-operative Societies Act would run, therefore, from the actual date of the knowledge of the said decision. Mr.Shah, for the respondent, however, made a strenuous attempt to impress upon me that the period of limitation prescribed under sec.102 for filing appeal by an aggrieved party against the decision of a Nominee is 60 days from the date of the decision and sub-rule(4) only prescribes the obligation for communication and would not have a bearing on the question as to when the limitation will commence to run. I am afraid that this is a contention which cannot be sustained at all. In Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition

> Officer and Another, AIR 1971 SC 1500, the Supreme Court was required to consider as to what meaning should be ascribed to the term "date of award" under sec.18(2)(b) of the Land Acquisition Act for the purposes of computation of the limitation for making an application for reference under sec.18. The Supreme Court in that case held that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned, and therefore the knowledge of the party affected by the award made by the Collector under sec.12 of the Land Acquisition Act, 1894 either actual or constructive is an essential requirement of fair play and natural justice. It is further held that the expression "the date of the award" used in proviso (b) to sec.18(2) of the said Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively and it will be unreasonable to construe the words from the date of the Collector's award used in the proviso to sec.18 in a literal or mechanical way. Mr.Shah learned Advocate for the respondents made an attempt to persuade me that the petitioner must be held to have constructive knowledge of the award because due notice under sub-rule (1) of Rule 41 for pronouncement of the decision was given to him. I am afraid that this contention would not be open to Mr.Shah in view of the obligatory provision contained in sub-rule (4). In my opinion, therefore, Mr.Joshi was perfectly justified in making the grievance that the Tribunal has failed to exercise the jurisdiction in summarily rejecting the appeal without ascertaining the facts by issuing notice on the respondents and allowing the parties to put in the evidence in support of the respective version."

4. In view of Rule 41(4) of the Rules and in view of the judgment of the Hon'ble Supreme Court in Raja Harish Chandra Raj Singh case reported in AIR 1971 SC 5000 7 judgment of this Court in Amrutlal Mangalji Joshi's case (supra), in my view there is an error apparent on the face of the record by the tribunal as the tribunal has not taken into consideration the Rule 41(4)(b) of the

Rules. There is breach of the violation of Rule 41. In view of the same, the petition is allowed. The impugned order passed by the tribunal is quashed and set aside. I direct the tribunal to heard the matter afresh on the merits of the matter, after hearing both the petitioner and the respondents and decide the same in accordance with law. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

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